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8 Attorneys for Defendant
9 ALLSTATE INSURANCE
10 COMPANY

11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

13 DONALD SING, BETTY SING, DOES 1
14 TO 100,

15 Plaintiffs,

16 vs.

17 ALLSTATE INSURANCE COMPANY,

18 Defendant.

No. C 07-5300 JL

ALLSTATE INSURANCE COMPANY'S
NOTICE TO PLAINTIFFS THAT
ACTION HAS BEEN REMOVED

SONNENSCHN NATH & ROSENTHAL LLP
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TO PLAINTIFFS AND THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that, pursuant to 28 U.S.C. sections 1441(a) and 1446, this action has been removed to the United States District Court for the Northern District of California. Copies of the "Notice of Removal of Civil Action" filed in the District Court and the "Notice That Action Has Been Removed" (without exhibits) filed in the Superior Court of California for the County of San Francisco are attached hereto as Exhibit "A."

All further proceedings in this action shall take place before the United States District Court for the Northern District of California, San Francisco Division.

Dated: October 18, 2007

SONNENSCHN NATH & ROSENTHAL LLP

By Kimberly De Hope *sr*
CYNTHIA MELLEMA
KIMBERLY DE HOPE

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

27279611W-1

EXHIBIT A

OCT. 17. 2007 1:07PM SONNENSCHN NATH

ORIGINAL
FILED
07 OCT 17 PM 3:57
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CYNTHIA MELLEMA (State Bar No. 122798)
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Attorneys for Defendant
ALLSTATE INSURANCE
COMPANY

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

C 07 5300

DONALD SING, BETTY SING, DOES 1
TO 100,

Plaintiffs,

vs.

ALLSTATE INSURANCE COMPANY,

Defendant.

No.

ALLSTATE INSURANCE COMPANY'S
NOTICE OF REMOVAL

SONNENSCHN NATH & ROSENTHAL LLP
525 MARKET STREET, 26th FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2708
(415) 882-5000

BY FAX

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF CALIFORNIA:

PLEASE TAKE NOTICE that pursuant to 28 U.S.C. sections 1441(a) and 1446,
defendant Allstate Insurance Company hereby removes this action to this Court on the ground
that this Court has original jurisdiction under 28 U.S.C. section 1332.

THE SUPERIOR COURT ACTION

1. On September 6, 2007, an action was commenced in the Superior Court of the State
of California for the County of San Francisco, entitled *Donald Sing, Betty Sing v. Allstate
Insurance Company and Does 1-100*, Case No. CGC-07-466924 (the "Superior Court Action").

2. In the Superior Court Action, plaintiffs seek damages arising out of an alleged breach of contract, breach of the implied covenant of good faith and fair dealing and breach of fiduciary duty. (Complaint, ¶ 8.)

3. Plaintiffs served their complaint on Allstate's registered agent on September 18, 2007. Allstate has not yet answered the Complaint.

4. Attached as Exhibit 1 are true and correct copies of the pleadings in the Superior Court Action with which Allstate has been served, which include the Summons and Complaint.

JURISDICTION

5. Allstate is informed and believes that plaintiffs are, and were when they filed the Superior Court Action, residents of the State of California.

6. Defendant Allstate is, and was at the time of filing of the Superior Court Action, a corporation organized and existing under the laws of the State of Illinois, with its principal place of business in the city of Northbrook, Illinois.

7. "Doe" defendants must be disregarded in determining diversity of citizenship. 28 U.S.C. section 1441(a) ("For purposes of removal under this chapter, the citizenship of defendants sued under fictitious names shall be disregarded.").

8. Accordingly, this action is between citizens of different states.

AMOUNT IN CONTROVERSY

9. Given the several categories of damages sought by plaintiffs, the amount in controversy in the Superior Court Action, exclusive of interest and costs, exceeds the \$75,000 jurisdictional minimum.

10. The complaint was filed in the "Unlimited Jurisdiction" division of the Superior Court, which has a jurisdictional minimum of \$25,000, exclusive of attorneys' fees, interest, or costs. *See* Cal. Civ. Proc. Code §§ 85, 86.

11. Plaintiffs also seek an undisclosed amount of damages, including interest. (Complaint, ¶ 10.)

12. Additionally, plaintiffs seek to recover attorney's fees. (Complaint, ¶ 10.) Attorney's fees reasonably incurred to compel payment of insurance policy benefits are

1 recoverable as an element of damages under *Brandt v. Superior Court*, 37 Cal. 3d 813 (1985),
 2 and therefore must be included in calculating the amount of controversy. *Galt G/S v. JSS*
 3 *Scandinavia*, 142 F.3d 1150, 1155-56 (9th Cir. 1998).

4 13. Plaintiffs' counsel advised counsel for Allstate that plaintiffs' actual damages
 5 approximate \$75,000, and plaintiffs seek punitive damages in excess of that amount, and would
 6 not stipulate that they seek less than \$75,000. A true and correct copy of a letter from Kimberly
 7 De Hope to Randall Choy is attached as Exhibit 2.

8 14. Plaintiffs also seek an undisclosed amount of punitive damages. (Complaint,
 9 Exemplary Damages Attachment.) In calculating the amount in controversy, the Court must
 10 consider the punitive damages that may be recovered by a plaintiffs if their claim for punitive
 11 damages should prevail. *Surber v. Reliance Nat. Indem. Co.*, 110 F. Supp. 2d 1227, 1232 (N.D.
 12 Cal. 2000).

13 15. Even under the United States Supreme Court's decision in *State Farm Mut.*
 14 *Automobile Ins. Co. v. Campbell*, 123 S. Ct. 1513 (2003), any punitive damages award in this
 15 case will likely exceed \$75,000. In *Campbell*, the court held that punitive-damages awards
 16 larger than nine times the amount of compensatory damages would rarely comport with due
 17 process, and that ratios larger than 4:1 would be constitutionally suspect. *Id.* at 1524. Here,
 18 plaintiffs have alleged at least \$25,000 in damages. Even under *Campbell's* stringent
 19 limitations, if plaintiffs succeed in proving Allstate's conduct was reprehensible, as they allege,
 20 their punitive damage award therefore would almost certainly exceed \$75,000.

21 ORIGINAL JURISDICTION

22 16. Based on the foregoing, this Court has original jurisdiction over the Superior Court
 23 Action under 28 U.S.C. section 1332. Plaintiffs and Allstate are citizens of different states and
 24 the amount in controversy exceeds \$75,000, exclusive of interest and costs. This action may
 25 therefore be removed to this Court pursuant to 28 U.S.C. sections 1441(a) and 1446.

26 WHEREFORE, Allstate hereby gives notice that this action has been removed, in its
 27 entirety, from the Superior Court of the State of California for the County of San Francisco to
 28 the United States District Court for the Northern District of California.

Dated: October 18 2007

SONNENSCHN NATH & ROSENTHAL LLP

By Kimberly De Hope, sjr
CYNTHIA MELLEMA
KIMBERLY DE HOPE

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

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Attorneys for Defendant
ALLSTATE INSURANCE
COMPANY

ENDORSED
FILED
San Francisco Superior Court
OCT 18 2007
GORDON FARRIN, Clerk
BY: CAROLYN BAUSTEIN
Hearing Clerk

SUPERIOR COURT OF STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

DONALD SING, BETTY SING, DOES 1
TO 100,

Plaintiffs,

vs.

ALLSTATE INSURANCE COMPANY,
Defendant.

No. CGC-07-466924

ALLSTATE INSURANCE COMPANY'S
NOTICE TO STATE COURT THAT
ACTION HAS BEEN REMOVED

SONNENSCHN NATH & ROSENTHAL LLP
525 MARKET STREET, 26TH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-2708
(415) 882-5000

TO THE CLERK OF THE ABOVE-ENTITLED COURT AND TO PLAINTIFFS AND
THEIR ATTORNEYS OF RECORD:

NOTICE IS HEREBY GIVEN that on October 17, 2007, defendant Allstate Insurance Company filed a Notice of Removal of Civil Action in the United States District Court for the Northern District of California, pursuant to 28 U.S.C. sections 1441(a) and 1446. A copy of the "Notice of Removal of Civil Action" (without exhibits) is attached hereto as Exhibit "A".

PLEASE TAKE FURTHER NOTICE that, pursuant to 28 U.S.C. section 1446(d), the filing of the "Notice of Removal of Civil Action" in the United States District Court, followed by the filing of this "Notice That Action Has Been Removed" with this Court, effected removal of this action and this Court may not proceed further unless and until the action is remanded.

Dated: October 18, 2007

SONNENSCHN NATH & ROSENTHAL LLP

By Kimberly De Hope /s/ Kimberly De Hope
CYNTHIA MELLEMA
KIMBERLY DE HOPE

Attorneys for Defendant
ALLSTATE INSURANCE COMPANY

27279612(V-1)

PROOF OF SERVICE

I, Reggie Neil Volstad, hereby declare:

I am employed in the City and County of San Francisco, California in the office of a member of the bar of this court whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Sonnenschein Nath & Rosenthal LLP, 525 Market Street, 26th Floor, San Francisco, California 94105.

On October 18, 2007, I served a copy of

ALLSTATE INSURANCE COMPANY'S NOTICE TO PLAINTIFFS THAT
ACTION HAS BEEN REMOVED

CIVIL COVER SHEET

ORDER SETTING INITIAL CASE MANAGEMENT CONFERENCE AND ADR
DEADLINES

ECF REGISTRATION INFORMATION HANDOUT

STANDING ORDER FOR ALL JUDGES OF NORHTERN DISTRICT OF
CALIFORNIA

WELCOME PACKET

NOTICE OF ASSIGNMENT OF CASE TO A US MAGISTRATE JUDGE FOR
TRIAL

CONSENT TO PROCEED

DECLINATION TO PROCEED

on the interested parties in this action by placing a true copy thereof, on the above date, enclosed in a sealed envelope, following the ordinary business practice of Sonnenschein Nath & Rosenthal LLP, as follows:

Randall Choy
Hedani, Choy, Spalding & Salvagione
595 Market Street, Ste. 1100
San Francisco, CA 94105

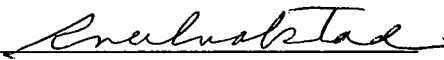
☒ U.S. MAIL: I am personally and readily familiar with the business practice of Sonnenschein Nath & Rosenthal LLP for collection and processing of correspondence for mailing with the United States Postal Service, pursuant to which mail placed for collection at designated stations in the ordinary course of business is deposited the same day, proper postage prepaid, with the United States Postal Service.

☐ FACSIMILE TRANSMISSION: I caused such document to be sent by facsimile transmission at the above-listed fax number for the party.

☐ FEDERAL EXPRESS: I served the within document in a sealed Federal Express envelope with delivery fees provided for and deposited in a facility regularly maintained by Federal Express.

☐ HAND DELIVERY: I caused such document to be served by hand delivery.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on October 18, 2007 at San Francisco, California.


Reggie Neil Volstad

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